

AO 243
REV 6/82MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District MASSACHUSETTS
Name of Movant Emilio Ramos	Prisoner No. 35179-054	Docket No. 98-11857
Place of Confinement United States Penitentiary, P. O. Box 1000, Lewisburg, Pennsylvania 17837		
<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;">UNITED STATES OF AMERICA</div> <div style="width: 20%; text-align: center;">v.</div> <div style="width: 40%;">EMILIO RAMOS</div> </div> <div style="text-align: right; margin-top: 5px;">(full name of movant)</div>		
MOTION		
<p>1. Name and location of court which entered the judgment of conviction under attack <u>United States District Court - District of Massachusetts</u></p> <p>2. Date of judgment of conviction <u>January 17, 1995</u></p> <p>3. Length of sentence <u>84 months - \$50.00 assessment, 5 years supervised release.</u></p> <p>4. Nature of offense involved (all counts) <u>Possession With Intent To Distribute Heroin</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input type="checkbox"/></p> <p>(b) Guilty <input checked="" type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>6. Kind of trial: (Check one)</p> <p>(a) Jury <input type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		

9. If you did appeal, answer the following:

(a) Name of court NOT APPLICABLE

(b) Result NOT APPLICABLE

(c) Date of result Not Applicable

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court NOT APPLICABLE (U.S. District Court for the District of Massachusetts)

(2) Nature of proceeding NOT APPLICABLE (e.g. 28 U.S.C. § 2255 Motion)

(3) Grounds raised NOT APPLICABLE (e.g., Deficient advice from counsel regarding my right of appeal after sentencing upon a guilty plea).

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☒ No ☐

(5) Result NOT APPLICABLE (My counsel voluntarily dismissed this...)

(6) Date of result NOT APPLICABLE (Unknown to Petitioner at this time)

(b) As to any second petition, application or motion give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result NOT APPLICABLE

(6) Date of result NOT APPLICABLE

(c) As to any third petition, application or motion, give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result NOT APPLICABLE

(6) Date of Result NOT APPLICABLE

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(3) Third petition, etc. Yes ☐ No ☒

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I wasn't aware of any adverse action, due to my counsel having failed to communicate the progress of the prosecution to me.

Plus, her voluntary dismissal, without prior consultation with me. see Exhibit 1 attached. letter dated July 14, 2004.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of Effective Assistance of Counsel, Mr.

Michael Avery, Esquire. Failure to give proper advise.

Supporting FACTS (tell your story *briefly* without citing cases or law): I required the superior ability of trained counsel in the 'examination into the record, research of the factual and legal law, as well as the strength and merits of the Government's case in chief against me, and counsel was constitutionally obligated to advise me respecting my decision to allow for intelligent exercise of particular right.

B. Ground two: Denial of Right of Appeal. Failure to Enter a timely notice of appeal, despite being requested to do so.

Supporting FACTS (tell your story *briefly* without citing cases or law): Mr. Michael Avery, Esquire, informed the Honorable Douglas P. woodlock, U. S. District Judge, at an Evidentiary Hearing held on May 12, 2000, at 2:30p.m. that he had no personal recollection concerning whether or not he had actually advised Petitioner of his right to appeal after his sentence was imposed....

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: The aforementioned grounds were presented, however, there has been no "full and fair adjudication upon the merits of the Petitioner's claims" due to the aforementioned ineffective assistance and/or deficient performance of counsel(s) representing the Petitioner in the complained of legal proceedings.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Michael Avery, Esquire, c/o Suffolk University Law School, 41 Temple Street, Boston, Massachusetts 02114

(b) At arraignment and plea SAME AS ABOVE

(c) At trial NOT APPLICABLE

(d) At sentencing SAME AS ABOVE

AO 243
REV 6/82(e) On appeal NOT APPLICABLE(f) In any post-conviction proceeding Elizabeth Prevett, Esquire, Assistant
Federal Public Defender, D.Mass., 408 Atlantic Avenue,, 3rd Fl.
Boston, Massachusetts 02110.(g) On appeal from any adverse ruling in a post-conviction proceeding NOT APPLICABLE16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☒17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☒ No ☐(a) If so, give name and location of court which imposed sentence to be served in the future: NOT APPLICABLEU. S. District Court for the Eastern District of New York(b) Give date and length of the above sentence: NOT APPLICABLE (e.g. 57 months)(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

August 2, 2004
(date)M. Nicholas
M. Nicholas, Case Manager
Authorized by the Act of
July 7, 1955, as amended, to
administer oaths, (18 USC 4004).Emilio Ramon
Signature of Movant

CERTIFICATE OF SERVICE

I, Emilio Ramos, hereby certify that I have served a true and correct copy of the foregoing:
28 U.S.C. § 2255 motion

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

Kevin Cloherty, Esquire
Assistant United States Attorney
U. S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

The Hon. Douglas P. woodlock
U. S. District Court-Boston, MA
1 Courthouse Way
Boston, Massachusetts 02210
[Attn: Clerk's Office]

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 2 day of August.

Respectfully Submitted,



M. Nicholas, Case Manager
Authorized by the Act of
July 7, 1955, as amended, to
administer oaths, (18 USC 4004).


EMILIO RAMOS

REG. NO. 35179-054

FEDERAL DEFENDER OFFICE
DISTRICT OF MASSACHUSETTS
408 ATLANTIC AVENUE, 3RD FLOOR
BOSTON, MASSACHUSETTS 02110

TELEPHONE 617-223-8061
(FAX) 617-223-8060

July 14, 2004

Mr. Emilio Ramos
Reg. #35179-054
U. S. Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

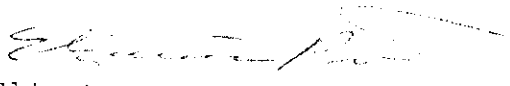
Dear Mr. Ramos:

I was informed by the court that you were attempting to contact me in connection with a writ of coram nobis you wish to file. In reading the letter you filed with the court, I was unclear about the exact nature of your request.

As you know, your \$ 2255 motion was voluntarily dismissed in anticipation of government support for a motion to reduce your term of supervised release under 18 U.S.C. 3583 (e). The support was conditioned on your continuing clear conduct on supervised release. The motion could not be filed before you had completed a year of supervised release. The grounds for your eligibility for release under the statute no longer applied after your intervening arrest and incarceration. Your probation officer in Brooklyn, who had supported the idea of the motion before your arrest, withdrew his support, and the statute allows for a reduction in supervised release only if it is "warranted by the conduct of the defendant released and the interest of justice."

I believe that any coram nobis you now file would be considered a separate action, for which you would not receive counsel unless the court decided to appoint you a lawyer.

Sincerely,


Elizabeth Prevett

ELP:lhld

Exhibit 1

AO 240 (Rev. 9/96)

UNITED STATES DISTRICT COURT

District of

2004-05-4 P 12:05

Plaintiff

V.

Defendant

U.S. DISTRICT COURT
DISTRICT OF MASSAPPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT

CASE NUMBER:

I, Chynell Johnson declare that I am the (check appropriate box)☒ Petitioner/plaintiff/movant ☐ other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☒ No (If "No," go to Part 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the institution? _____

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past **six** months' transactions.2. Are you currently employed? ☐ Yes ☒ No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

a. Business, profession or other self-employment	<input type="radio"/> Yes	<input checked="" type="radio"/> No
b. Rent payments, interest or dividends	<input type="radio"/> Yes	<input checked="" type="radio"/> No
c. Pensions, annuities or life insurance payments	<input type="radio"/> Yes	<input checked="" type="radio"/> No
d. Disability or workers compensation payments	<input type="radio"/> Yes	<input checked="" type="radio"/> No
e. Gifts or inheritances	<input type="radio"/> Yes	<input checked="" type="radio"/> No
f. Any other sources	<input type="radio"/> Yes	<input checked="" type="radio"/> No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

FINANCIAL AFFIDAVIT			
IN SUPPORT OF REQUEST FOR ATTORNEY/EXPERT/OTHER COURT SERVICES WITHOUT PAYMENT OF FEE			
IN UNITED STATES		<input type="checkbox"/> MAGISTRATE	<input checked="" type="checkbox"/> DISTRICT
		<input type="checkbox"/> APPEALS COURT or	<input type="checkbox"/> OTHER PANEL (Specify below)
IN THE CASE OF		FOR	LOCATION NUMBER
Johnson v.s. Barnhart		AT	
		2004 AUG -4 P 12:25	
PERSON REPRESENTED (Show your full name)		DOCKET NUMBERS	
Chynell Johnson		Magistrate	
		District Court	
		Court of Appeals	
CHARGE/OFFENSE (describe if applicable & check box →)		<input type="checkbox"/> Defendant—Adult <input type="checkbox"/> Defendant - Juvenile <input type="checkbox"/> Appellant <input type="checkbox"/> Probation Violator <input type="checkbox"/> Parole Violator <input type="checkbox"/> Habeas Petitioner <input type="checkbox"/> 2255 Petitioner <input type="checkbox"/> Material Witness <input type="checkbox"/> Other	
		<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	

ASSETS	EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed Name and address of employer: _____ IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____ How much did you earn per month? \$ _____	
		If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____	
	OTHER INCOME	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No <div style="display: flex; justify-content: space-between;"> <div> RECEIVED IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES \$ _____ </div> <div> SOURCES _____ </div> </div>	
	CASH	Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ _____	
	PROP- ERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <div style="display: flex; justify-content: space-between;"> <div> IF YES, GIVE THE VALUE AND \$ DESCRIBE IT _____ _____ _____ </div> <div> VALUE _____ _____ _____ </div> <div> DESCRIPTION _____ _____ _____ </div> </div>	

OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS <input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED	Total No. of Dependents _____	List persons you actually support and your relationship to them _____ _____ _____	
	DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	APARTMENT OR HOME: rent N Star phone	Creditors _____ _____ _____	Total Debt \$ _____ \$ _____ \$ _____	Monthly Paymt. \$ 84.00 \$ 179 \$ 60.00

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)

2/15/04
Chynell Johnson

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SSN: 032-52-3539

Chynell **JOHNSON**,
Plaintiff

v.

Jo Anne B. **BARNHART**,
Commissioner of the Social
Security Administration

FILED
JUL 30 2004
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
JUL 30 4 12 PM '04

Civil Action Number:

MOTION TO PROCEED IN FORMA PAUPERIS

The plaintiff moves that pursuant to 28 U.S.C.A. § 1915 this court order that the complaint in this matter be entered, and that the payment of the entry fee be waived, and that the court order the cost of services, if any, to be paid from public funds.

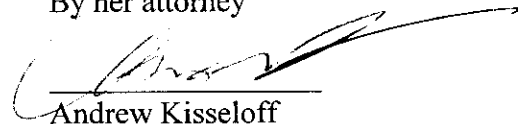
As grounds, the plaintiff states that she is an indigent person who is without funds to pay litigation costs, and that she has filed an affidavit of indigency, which is incorporated herein.

WHEREFORE, the plaintiff moves that the court allow the complaint to be entered without payment of the entry fee.

Dated: July 30, 2004

CHYNELL JOHNSON

By her attorney



Andrew Kisseloff

BBO#274240

Hale and Dorr Legal Services Center
of Harvard Law School

122 Boylston Street
Jamaica Plain, MA 02130
(617) 390-2590